

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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September 05, 2025

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 24-13111-W

Case Style: Alabama State Conference of the NAACP, et al v. Attorney General, State of Alabama

District Court Docket No: 2:24-cv-00420-RDP

Counsel, please be prepared to address the following at oral argument:

1. Alabama law provides that “a third party” may not knowingly be paid or receive a gift to complete or deliver “a voter’s” absentee ballot application (Ala. Code § 17-11-4(d)(1)) and that “a person” may not knowingly pay or give a gift to a “third party” to complete or deliver “a voter’s” absentee ballot application (Ala. Code § 17-11-4(d)(2)). What is the meaning of “third party” in these provisions? *Compare* Report of the Comm’n on Fed. Election Reform, Building Confidence in U.S. Elections 46 (Sept. 2005) (“States should consider new legislation to minimize fraud in voter registration, particularly to prevent abuse by third-party organizations that pay for voter registration by the piece.”). Does Alabama Code Section 17-11-4(d)(2) make it illegal for a voter to pay a person to help that voter? Separately, does Alabama Code Section 17-11-4(d)(1) make it illegal for a person to receive payment from a voter to help that voter?
2. Alabama law provides that a third party may not “knowingly” be paid or receive a gift to complete or deliver a voter’s absentee ballot application (Ala. Code § 17-11-4(d)(1)) and a person may not “knowingly” pay or give a gift to a third party to complete or deliver a voter’s absentee ballot application (Ala. Code § 17-11-4(d)(2)). Alabama law dictates that “[a] person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when *he is aware* that his conduct is of that nature or that the circumstance exists” (Ala. Code § 13A-2-2(2) (emphasis added)). What does it mean to “knowingly” give or

receive payment or a gift for absentee ballot application assistance? Does a person act “knowingly” when absentee ballot application assistance is provided as part of other regular job responsibilities for which an individual receives a wage? Does a person act “knowingly” when he invites to his home a relative or friend with the promise of food and refreshments and expects he will receive assistance during the visit? Alabama law also contrasts the mental state of “knowingly” with “intentionally,” and “[a] person acts intentionally with respect to a result or to conduct described by a statute defining an offense, when his *purpose* is to cause that result or to engage in that conduct” (Ala. Code § 13A-2-2(1) (emphasis added)). Why does Alabama Code Sections 17-11-4(d)(1) and (d)(2) use “knowingly” instead of “intentionally”?

3. Should we certify a question to the Supreme Court of Alabama about whether and how § 17-11-4(e) affects the prohibitions in (c)(2), (d)(1), and (d)(2)?

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